



Welcome!

Our Webinar Regarding the
Corporate Transparency Act
and Real Estate Transactions
Will Begin Shortly.



Free Demo Link Will Be
Available to All Webinar
Attendees

Thank you for waiting, before we begin:

- Please submit any questions in the Q&A section.
- To schedule a demo of our system, please visit:
- <https://fincenreport.com/corporate-filing-lawyers-accountants/>



February 2024

Real Estate Transactions and the Corporate Transparency Act

A presentation for:



ALTA

American Land Title Association



Agenda

- **Basic Concepts**

- Reporting Company
- Exemptions
- Beneficial Owner
- Company Applicant
- Timing Rules

- **Indirect Beneficial Owners**

- Company Family Tree
- Calculating Indirect Ownership
- Real Estate Transaction Structures
- Qualified Opportunity Zone Funds
- Section 1031 swaps



THOUGHT LEADERSHIP

More than 30 million will be impacted by the new CTA requirements.

Corporate Transparency Act Overview



Every **reporting company** that is not **exempt** must file a **BOI Report** that discloses five specific items of PII for each of its Beneficial Owners

- Entities formed (or registered to do business) **before January 1, 2024**, do not need to identify a Company Applicant
- Entities formed (or registered to do business) **on or after January 1, 2024**, must identify their **Company Applicant**.
- **There is no annual renewal**, but the reporting company must *amend* its BOI Report within *30 days after any change in PII* for any of its Beneficial Owners.
- **Failing to file on time may result in a \$500 per day fine**; a willful failure to file (or filing false information) may be a felony.



JOINT LEADERSHIP

Need to Work Together - Many Companies Unaware of How this Will Impact Them

What is a Reporting Company



The CTA defines “reporting company” as:

a corporation, limited liability company, or other entity that is (i) created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian Tribe; or (ii) formed under the law of a foreign country and registered to do business in any State or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the laws of a State or Indian Tribe.

- ✓ The Regulations distinguish between “Domestic Reporting Company” and “Foreign Reporting Company.”
- ✓ If it is formed by the filing of a document (corporation, LLC, limited partnership) it is a reporting company.
- ✓ Legal entities that are not reporting companies: (1) common law general partnerships, and (2) some kinds of trusts.

Which Reporting Companies Are Exempt

The CTA creates 23 separate exemption types:

Securities reporting issuer	Depository institution holding company	Other Exchange Act registered entity	State-licensed insurance producer	Financial market utility	Large operating company
Governmental authority	Money services business	Investment company or investment adviser	Commodity Exchange Act registered entity	Pooled investment vehicle	Subsidiary of certain exempt entities
Bank	Broker or dealer in securities	Venture capital fund adviser	Accounting firm	Tax-exempt entity	Inactive entity
Credit union	Securities exchange or clearing agency	Insurance company	Public utility	Entity assisting a tax-exempt entity	

What is a Company Applicant

Two types:

An **individual** is a **company applicant** if the individual **directly files the document that creates (or registers) the reporting company**

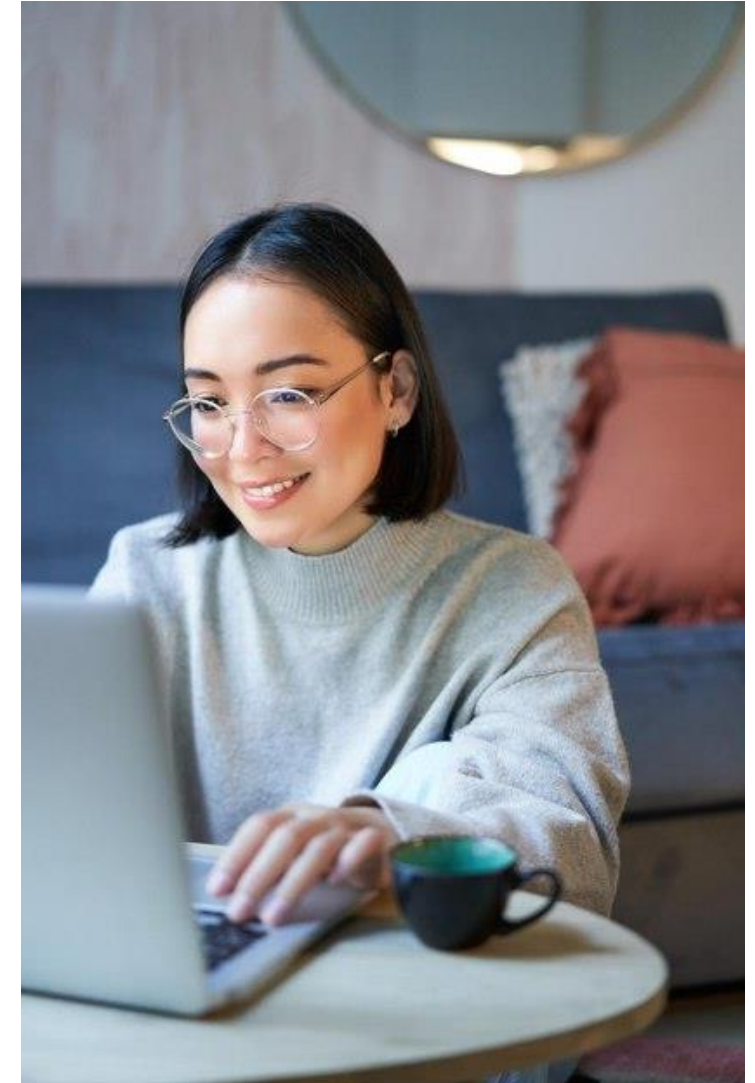
An **individual** is a **company applicant** if the individual **is primarily responsible for directing or controlling such filing** if more than one individual is involved in filing.

Check out FinCEN's FAQ E.5 (issued January 12, 2024).

It does not matter who is the "organizer".

Firms will have little leeway to manage this process. Firms should make sure their policies for entity formation align with FinCEN's latest guidance.

- The company applicant must always be an **individual**, not a firm or company



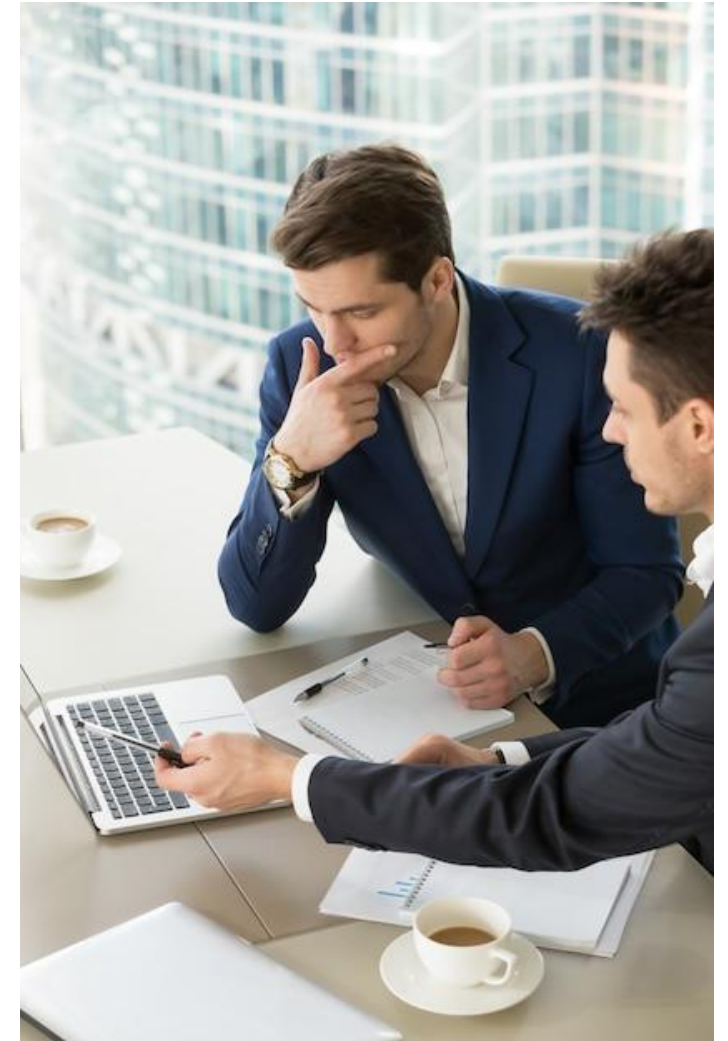
What is a Beneficial Owner

A beneficial owner is an *individual* that meets either test:

An individual is a beneficial owner if the individual **exercises substantial control over the reporting company**

An individual is a beneficial owner if the individual **owns or controls 25 percent** or more of the ownership interests of such reporting company.

- A beneficial owner must ALWAYS be an individual (except where an exempt entity owns an ownership interest in a reporting company).



Calculating Ownership Percentages



The Calculation Rule: Section 1010.380(d)(2)(iii):

(A) Present Time Rule. Calculations made “at the present time, and any options or similar interests of the individual shall be treated as exercised”

(B) Partnership Capital Rule. For reporting companies that issue capital or profit interests (including entities treated as partnerships for federal income tax purposes), the individual's ownership interests are the individual's capital and profit interests in the entity, **calculated as a percentage of the total outstanding capital and profit interests of the entity;**

(C) Corporate Capital Rule. For corporations, the applicable percentage shall be the **greater of:**

(1) **Voting Power Rule.** the **total combined voting power** of all classes of ownership interests of the individual as a percentage of total outstanding voting power of all classes of ownership interests entitled to vote, **or**

(2) **Total Value Rule:** the **total combined value** of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interests; **and**

(D) Failsafe – 25% of Any Class: If the facts and circumstances do not permit the calculations described in either paragraph (d)(2)(iii)(B) or (C) to be performed with reasonable certainty, any individual who owns or controls **25 percent or more of any class or type of ownership interest** of a reporting company shall be deemed to own or control 25 percent or more of the ownership interests of the reporting company.

Attributing Ownership to an Individual



(A) If an Owner is a Non-Exempt Reporting Company. Determine the owners of the non-exempt reporting company and calculate their indirect percentages in the reporting company.

(B) If an Owner is an Exempt Reporting Company. Report the name of the exempt entity. Section 380(b)(2)(i).

(C) If an Owner is a Non-Reporting Company / Non-Individual:

- (1) **Trust** - Apply the Trust Rule of Section 380(d)(2)(ii)(C)
- (2) **Anything else** – Follow the guidance in Section 380(d)(2)(ii).

(D) Married Individuals in community property states: If an individual is a beneficial owner (by reason of ownership) and that individual is married and resides in a community property state, consider whether the first individual's spouse (or registered domestic partner, depending on the state) must also be designed as a beneficial owner.

This can be tricky – you may need a family law attorney in the state where the BO resides. Some special fact patterns:

- ❖ Did the BO acquire the ownership interest before (or during) the marriage?
- ❖ Did the BO acquire the ownership interest by gift, devise or bequest?
- ❖ Is there a power of attorney / disclaimer between the spouses?

Beneficial Owner – Substantial Control

An individual “**exercises substantial control**” over a reporting company if that individual:

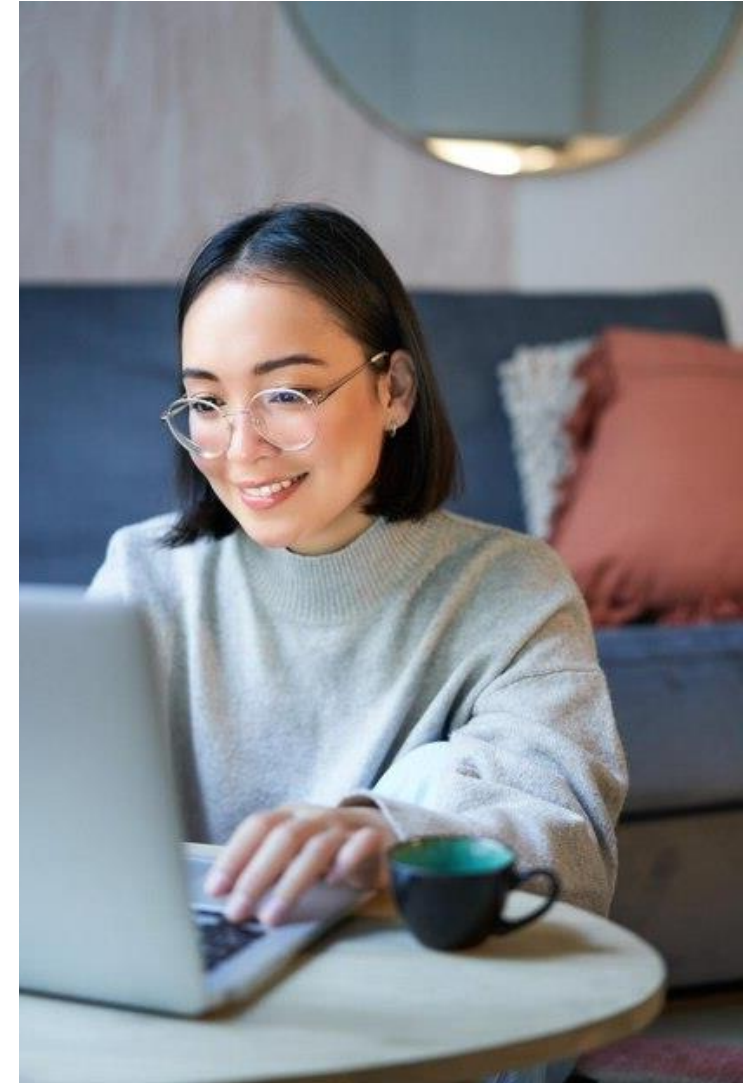
- (A) Serves as a senior officer of the reporting company;
- (B) Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);
- (C) Directs, determines, or has *substantial influence over important decisions* made by the reporting company, including decisions regarding:
 - (1) The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company;
 - (2) The reorganization, dissolution, or merger of the reporting company;
 - (3) Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;
 - (4) The selection or termination of business lines or ventures, or geographic focus, of the reporting company;
 - (5) Compensation schemes and incentive programs for senior officers;
 - (6) The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;
 - (7) Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures; or
- (D) Has any other form of substantial control over the reporting company.”



Filing Reports: The Decision Tree

For each entity:

1. Is it a reporting company?
2. Is it exempt?
3. If it is exempt and an FPIV, see special disclosure rule
4. If not exempt:
 - a. Who are beneficial owners by means of ownership percentage
 - i. Is the entity a partnership or a C-corp?
 - ii. Apply Partnership Capital Rule or Corporate Capital Rule
 - iii. Does this produce an outcome with reasonable certainty?
 - iv. If not, apply the Failsafe Rule
 - b. Who are beneficial owners by means of substantial control?
 - a. List all senior officers
 - b. List all board members
 - c. List those with power of appointment
 - d. List those with substantial influence over major decisions
 - e. List any others with any other form of substantial control
5. For entities formed prior to 1/1/2024 – no need to disclose Company Applicant. All others must.



Data Required

For the **reporting company**:

- Legal name
- Any trade names or “DBAs”
- Current street address of principal place of business
- Jurisdiction of formation
- Taxpayer Identification Number (EIN)

For each **beneficial owner**:

- Legal name
- Date of birth
- Residential Address
- Unique identifying number
- Image of the document that supplies the unique identifying number

For each **company applicant** (if required):

- Same information as beneficial owner (except that company applicant may use business address if company applicant is in the business of forming entities)



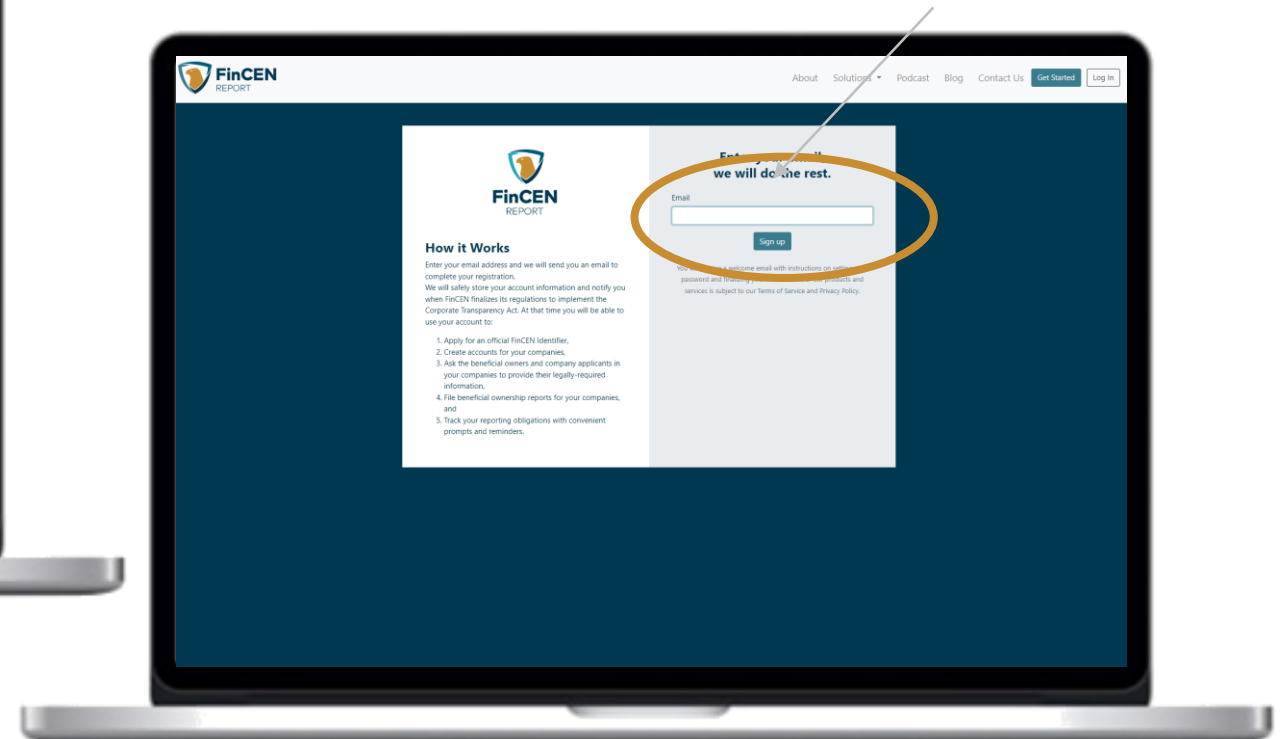
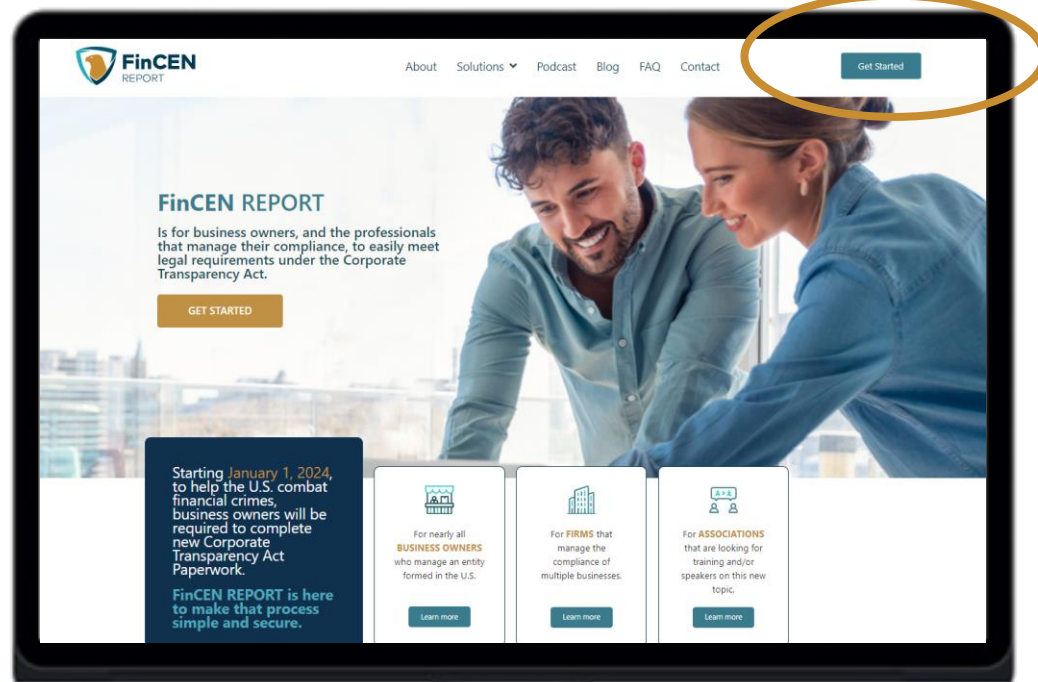
The FinCEN REPORT Solution



Go to fincenreport.com and click on “Get Started.”




Enter your name and email address.



The FinCEN REPORT Solution





How it Works

Enter your email address and we will send you an email to complete your registration. We will safely store your account information and notify you when FinCEN finalizes its regulations to implement the Corporate Transparency Act. At that time you will be able to use your account to:

1. Apply for an official FinCEN Identifier,
2. Create accounts for your companies,
3. Ask the beneficial owners and company applicants in your companies to provide their legally-required information,
4. File beneficial ownership reports for your companies, and
5. Track your reporting obligations with convenient prompts and reminders.


**Enter your email,
we will do the rest.**

Email

[Sign up](#)

You will receive a welcome email with instructions on setting your password and finalizing your account. Use of our products and services is subject to our Terms of Service and Privacy Policy.

Each individual creates an individual account for their PII.



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Filings

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FAQ

Corporation

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LLC

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5

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You have


14

Companies under management.

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You have no new alerts at this time.





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+ Add Company

Import Companies


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Type

State

Name	Company Type	Organization State	Status	Last Filing Date / Status	Billing Status
Greg 7282	Corporation	AL	Created		Pending Setup
TED Practice	Corporation	GA	Initial BO Invitation Sent		Pending Setup
GF1	Corporation	AL	Created		Pending Setup



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Bobby McGee Trucking, LLC

+ Add New Member

Edit Company Information

Wizard

General Information

Billing Information

Company Members

Pending Invitations

Wizard Reports

General Information	
Legal Name	Bobby McGee Trucking, LLC
DBA Name	
Company Type	Limited Liability Company
Organization State	DE
EIN	89-8855452
Formation Date	January 1, 1970
Address 1	122 Trucking Way
Address 2	
Address 3	
City	Atlanta
State / Province	Georgia

Status Information

This company is unable to file due to the following issues

Remind Admins

The U.S. Department of the Treasury is currently not accepting filings, when they enable filings you will be able to continue.

There is a pending invite to jfterp@gmail.com

Member **Tom Q Owner** has the following issues

Remind User

Full legal name is required

Date of birth is required

A completed identifying document is required

Member **Abe Frohman** has the following issues

Remind User


Date of birth is required

A completed identifying document is required

Member **Bob Adminston** has the following issues

Remind User

A completed identifying document is required



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Wizard

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Company Members

Pending Invitations

Wizard Reports

Member Name	Roles	Actions
Tom Q Owner	<div>Beneficial Owner</div> <div>Senior Officer</div> <div>Admin</div>	<div>Edit</div>
alan surell	<div>Advisor</div>	<div>Edit</div>
Abe Frohman	<div>Beneficial Owner</div> <div>Senior Officer</div> <div>Admin</div>	<div>Edit</div>
Bob Adminston	<div>Beneficial Owner</div> <div>Admin</div> <div>Company Applicant</div>	<div>Edit</div>

Exempt Entities	Roles	Actions
This company has no exempt entities.		

The FinCEN REPORT Pricing



- Individual Accounts are **Free**
- Advisor Accounts are **Free**
- Reporting Company pays **\$199 per year** beginning with first filing
- Service includes **unlimited amendments** during subscription term



Example 1: LLC Taxed as Partnership

Startup Co. LLC

- Larry, Bill and Sally form an LLC.
- Each contributed \$1,000 and received 1,000 units of membership interest.
- The Operating Agreement provides that distributions are made (a) first to members in proportion to their unreturned capital contributions, and (b) thereafter to members in proportion to their percentage interest.

Who are the beneficial owners?

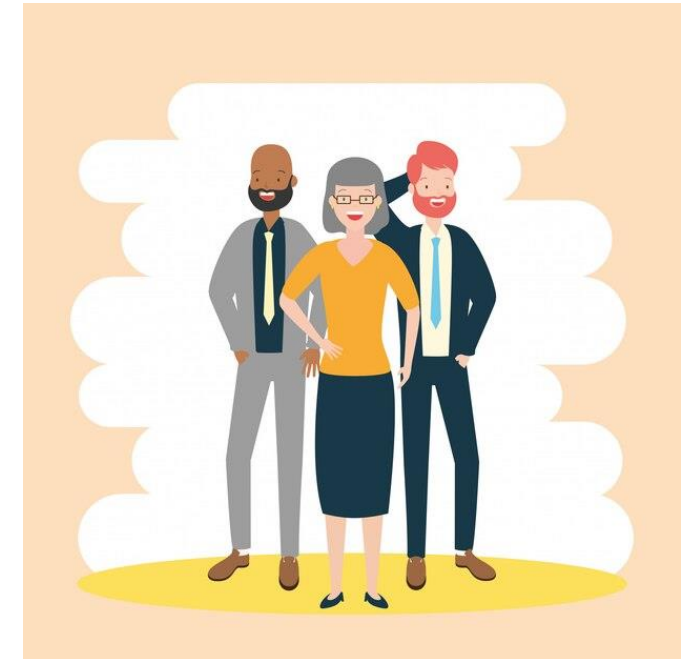


Example 1: LLC Taxed as Partnership

Who are the beneficial owners (based solely on ownership)?

- Each of Larry, Bill and Sally has 33% of the o/s capital interest and profits interest.
- If the LLC were liquidated, each would receive >25% of the capital and profits interest, therefore each is a BO.
- Is this answer reasonably certain? Yes.

Final Answer: Each of Larry, Bill and Sally is a BO.



Example 2: Multi-Level Analysis – Part 1

Reporting Company is an LLC, taxed as a partnership with a multi-level waterfall:

- Property Co contributes real property with a value of \$5 million; Investor Co contributes cash of \$5 million; Developer Co contributes nothing
- First level waterfall: Property Co and Investor Co split distributions 50/50 until each has obtained a return of their contributed capital;
- Second level waterfall: Developer Co gets 100% of the next \$1 million;
- Thereafter, all remaining distributions are split (a) 25% to Property Co, (b) 25% to Developer Co, and (c) 50% to Investor Co.

Ignoring substantial control (focusing solely on ownership) who is a beneficial owner?

- The multi-level waterfall means that applying the Partnership Capital Rule does not lead to a reasonably definite outcome. (We cannot know if distributions will reach the third level of the waterfall.)
- Applying the failsafe rule means that each of the three owns >25% of at least one “class or type of security”.
 - Property Co and Investor Co each have 50% at the first level;
 - Developer Co has 100% at the second level;
 - Third level is 25% / 25% / 50%
 - Must look “up the ladder” to attribute ownership to individuals.



Property Co,
LLC

Developer
Co, LLC

Investor Co,
LLC

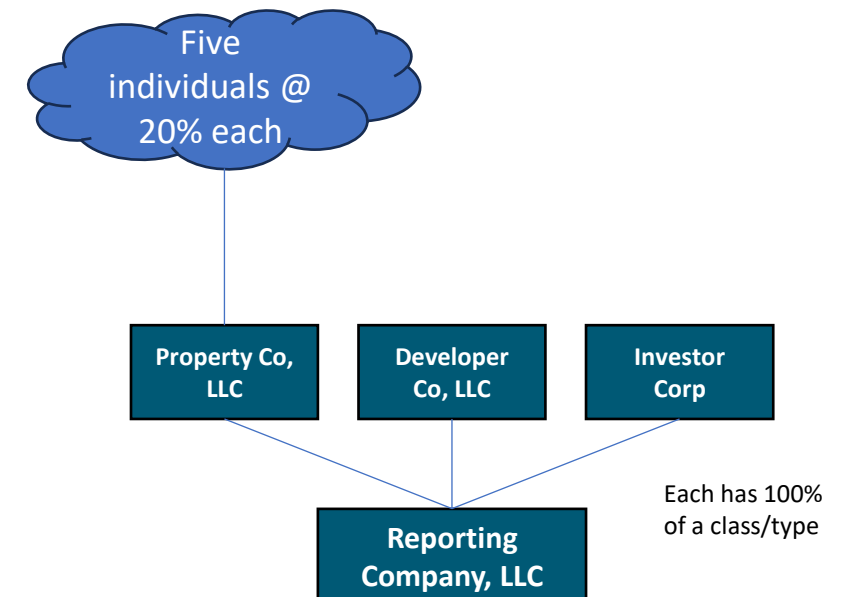
Reporting
Company, LLC

Example 2 / Part 2 / Multi-Level Analysis of Property Co



Same facts as Example 2:

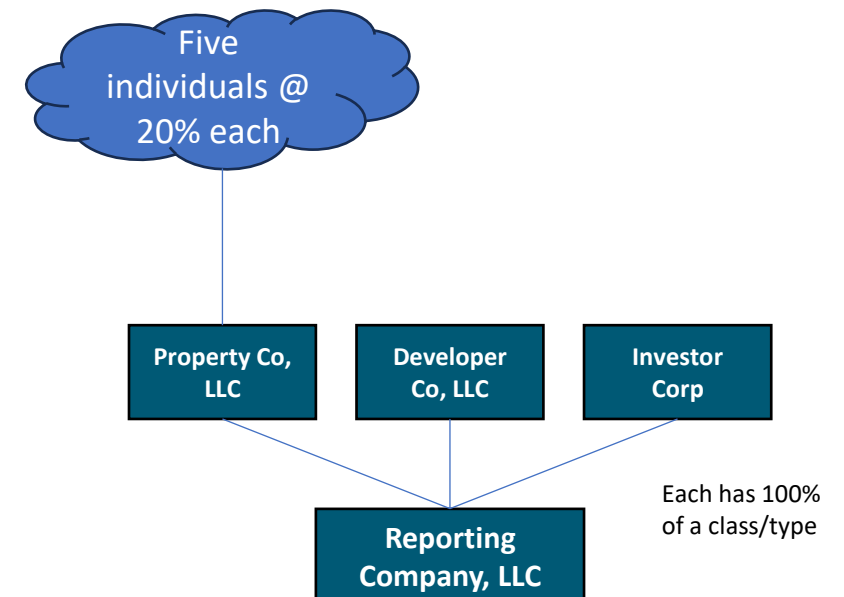
- Applying the failsafe rule means that each of the three owns >25% of at least one “class or type of security.”
- Property Co. owns 50% of one class and has five owners with 20% each:
 - Purely on the basis of ownership, each individual has an indirect 10%, which is less than a 25% interest in Reporting Company.
 - Although the regulations are not entirely clear, examples given by FinCEN in its Small Entity Compliance Guide (see page 27) exclude individuals whose indirect percentage is less than 25%
 - Each individual’s percentage = percentage in Holdco times Holdco percentage in reporting co.



Example 2 / Part 3 / Substantial Control Analysis

Same facts as Example Part 2:

- Do any of the Property Co individuals have substantial control over Reporting Co?
 - Examine the Operating Agreement of Property Co.
 - Is there a Manager or Board of Managers?
 - Is there a CEO/President/CFO/COO/General Counsel?
 - Do Members of Property Co. vote on important decisions?
 - The answer will depend on the Operating Agreement of Property Co.

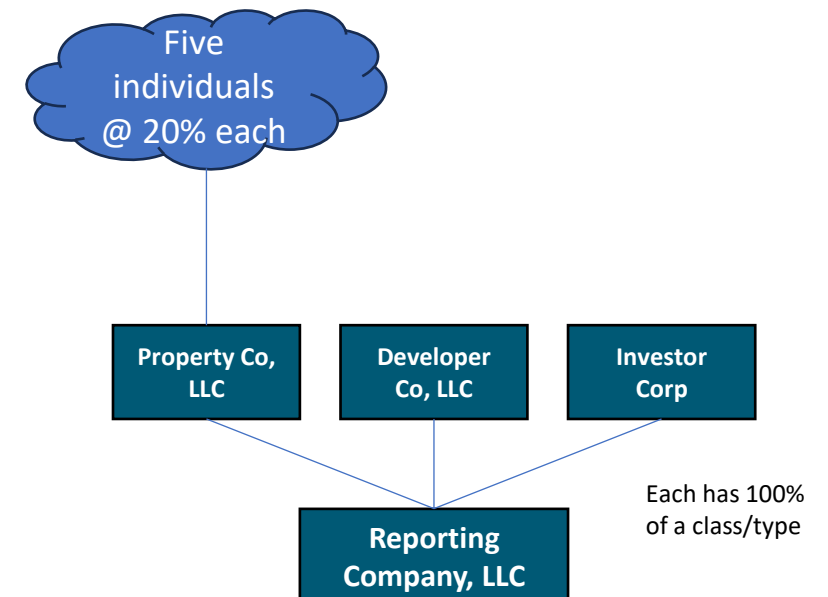


Example 3 / Part 1 / Substantial Control Analysis

Same waterfall as Example 2.

Reporting Co. Operating Agreement: (a) Developer Co, LLC is Manager, but (b) any Major Decision requires consent of both Property Co. and Investor Corp.

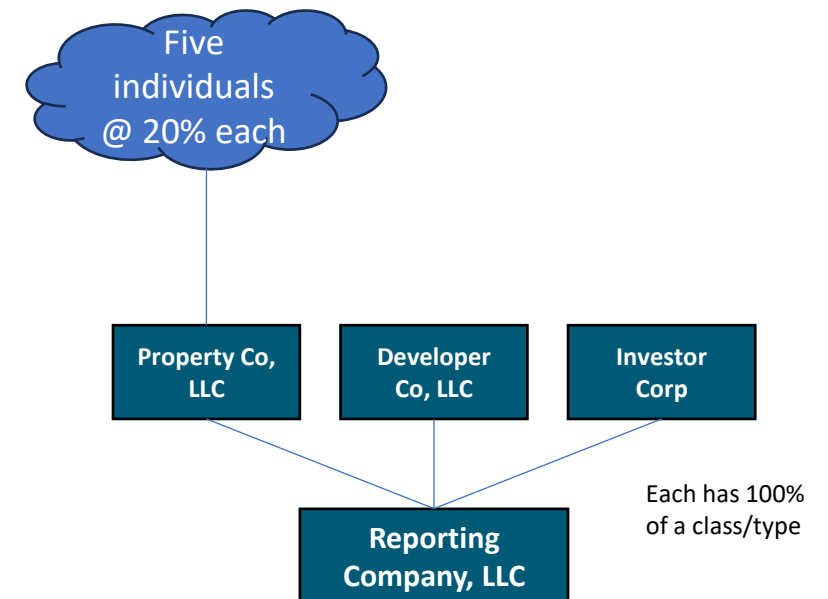
- Ownership analysis is the same as before
- Substantial control analysis is different
 - Any individual with substantial control over Property Co., will have substantial control over Reporting Company
 - Any individual with substantial control over Investor Corp. will have substantial control over Reporting Company
 - *FinCEN Guidance?* **No**. The Small Entity Compliance Guide does not address more complex deals like this.



Example 3 / Part 2 / SC Analysis – Property Co.

Assume Property Co. is a member-managed LLC, with all decisions requiring a majority vote of the five 20% owners:

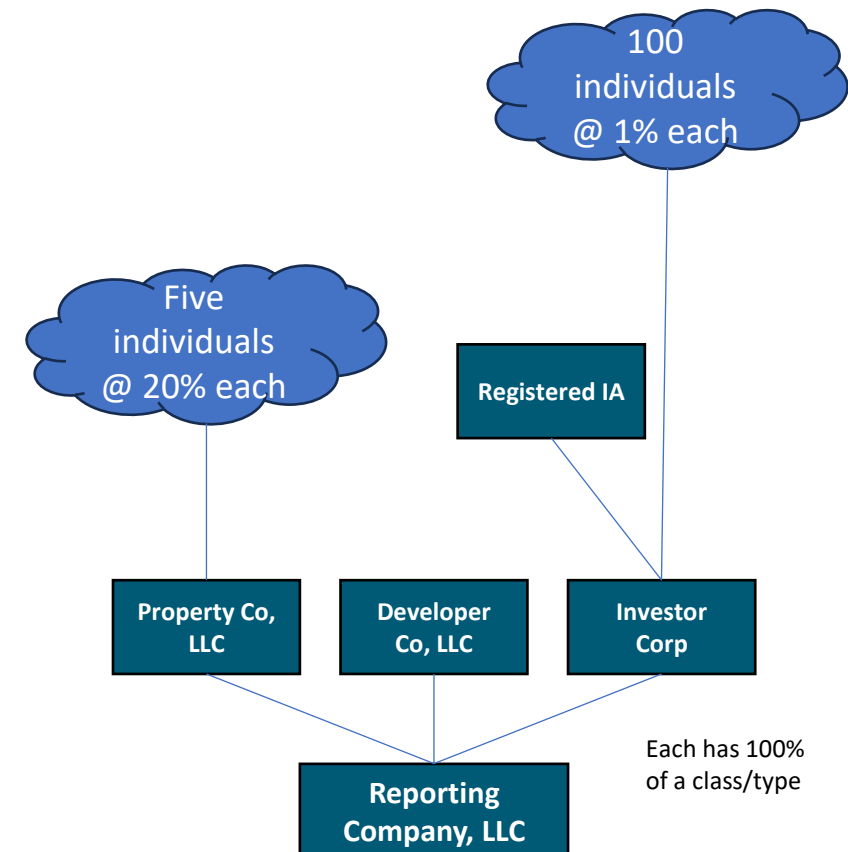
- Each Member of Property Co. will have substantial control over Reporting Company by the ‘transitive power of substantial control’
 - Ownership percentages multiply fractions
 - Substantial control is transitive



Example 3 / Part 3 / SC Analysis – Investor Corp.

Assume Investor Corp. is a REIT, managed by a licensed Investment Advisor:

- The Investment Advisor has substantial control over Investor Corp.
- Investment Advisor is an exempt entity – Sec. 380(c)(2)(x)
- Investor Corp. has 100% of a class/type of security in Reporting Co
 - Investment Advisor is a BO by reason of substantial control
 - Reporting Company should name Investment Advisor as a BO (provide legal name only – Sec. 380(b)(2)(i))

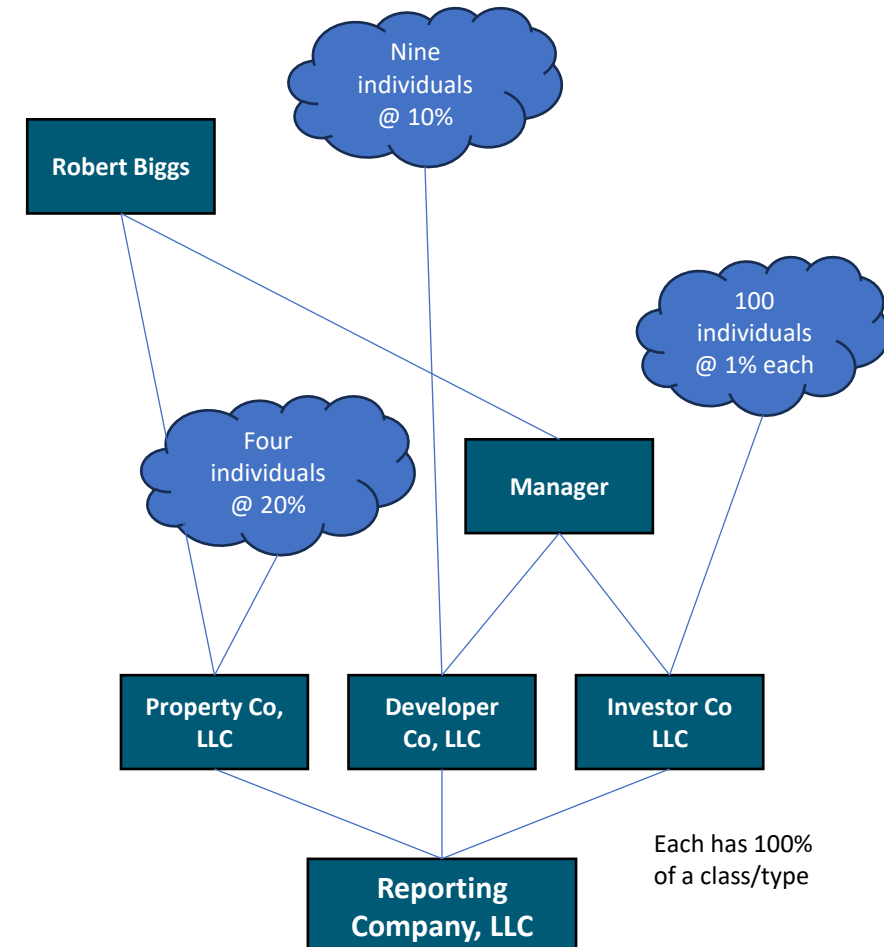


Example 3 / Common Deal Structure

- Reporting Co. waterfall gives each of Property Co., Developer Co. and Investor Co, >25% of at least one class/type
- Robert Biggs (a) owns 20% of Property Co. AND 10% of Developer Co., and (b) acts as sole Manager of Reporting Co., Property Co., Investor Co. and Developer Co.
- Property Co. OA has a Major Decisions member-vote provision
- Developer
- Developer Co. OA has a Major Decisions member-vote provision
- Investor CO. OA gives Manager complete control; no member-vote

➤ *Who are all the beneficial owners of Reporting Co. and why?*

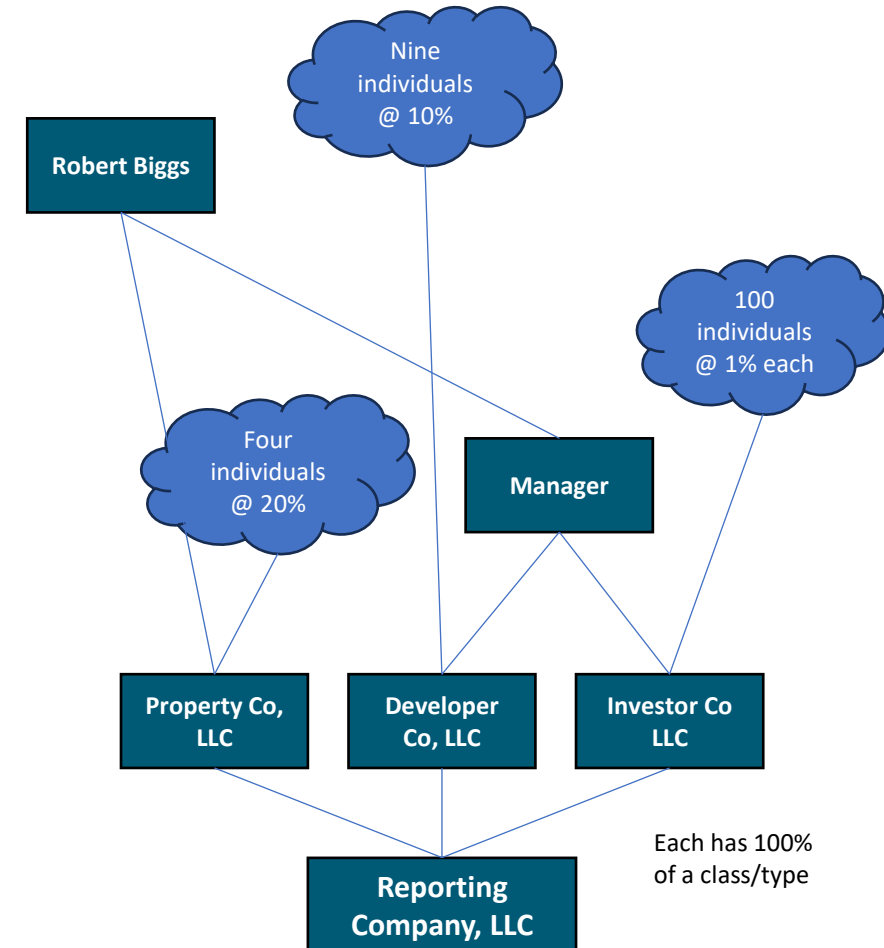
- Robert Biggs (Ownership and SC)
- Four individual members of Property Co. (SC)
- Nine individual members of Developer Co. (SC)



Example 3 / Part 2 - Variations

How would the answer change if:

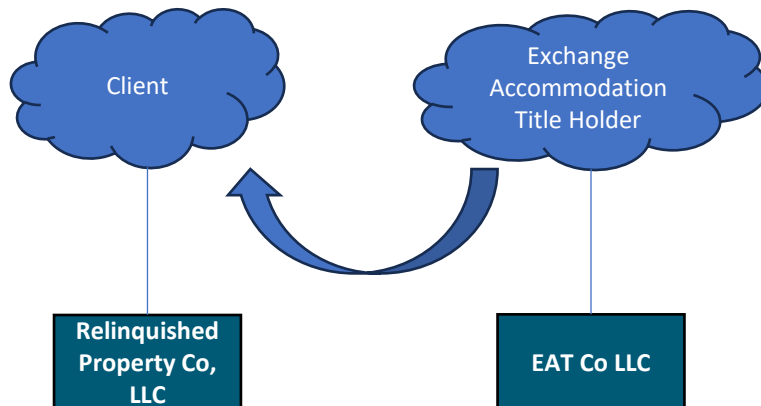
- *Robert Biggs put all his indirect interests into a trust?*
 - Would need to apply the trust rule
- *Investor Co. had an OA with a member-vote provision?*
 - Would need to include the 100 individual members of Investor Co.
- *Investor Co. was an exempt entity?*
 - Reporting Company would list Investor Co. by name – no need to go up the ladder
- *Reporting Co. had a CEO and a CFO?*
 - Those individuals would also be BO's because of SC



Example 4 / Section 1031 Exchange

An Exchange with an Exchange Accommodation Title Holder (EAT) may raise issues:

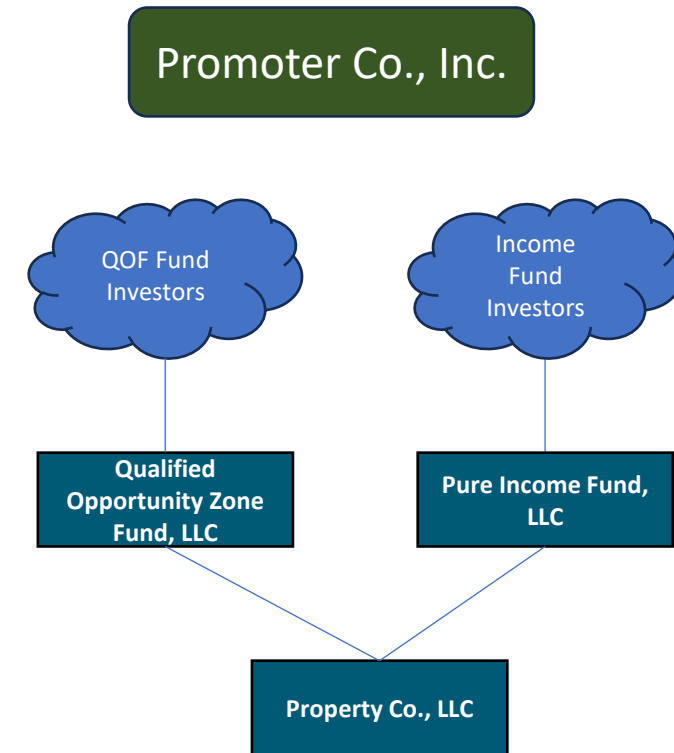
- *Strict Timing Rules under Sec. 1031 -*
 - 45 days to identify the new property
 - 180 days to close
 - Newly-formed entity has 90 days to file (30 days in 2025)
- *To be safe, EAT LLC should file its BOI Report*
- *After closing EAT LLC should amend its BOI Report to reflect the change in ownership*



Example 5 / Qualified Opp Zone Fund

Transactions under Opportunity Zone regulations may raise issues:

- *Investors in QOF Fund must have qualified rollover gain subject to timing rules and other requirements*
- *To satisfy OZ rules, Property Co., LLC must satisfy all requirements for a Qualified Opportunity Zone Business (QOZB)*
- *Promoter Co., Inc. may act as manager for QOF, Income Fund and Property Co.*
- *QOF may contain OZ requirements in Operating Agreement, any waiver of those requirements may require the consent of all (or a majority) of the QOF Fund Investors.*
- *Property Co. Operating Agreement may also contain OZ requirements, with waiver required from QOF*
- *Counsel should examine the management agreements and operating agreements with a view towards the substantial control analysis. Under some circumstances:*
 - *All QOF Fund Investors may have substantial control*
 - *Promoter Co. may have substantial control*



Thank You



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